

STEVEN A. GIBSON
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DICKINSON WRIGHT PLLC

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TAE-SI KIM, an individual, and JIN-SUNG
HONG, an individual,

Plaintiffs,

vs.

ADAM B. KEARNEY, an individual;
EDWARD C. REED, an individual;
BARBARA R. REED, an individual; REED
TEAM, d/b/a RE/MAX EXTREME, a Nevada
general partnership; FIRST AMERICAN
TITLE, a foreign corporation; RE/MAX
INTERNATIONAL, INC., a Colorado
corporation; GINA THOMAS, an individual;
ALVERSON, TAYLOR, MORTENSEN &
SANDERS, a Nevada law firm; the Estate of
JAMES L. ZEMELMAN, ESQ.; CUMORAH
CREDIT UNION, a Nevada non-profit
corporation; CHARLES M. DAMUS, ESQ., an
individual; and VALLEY FORECLOSURE
SERVICES, LLC, a Nevada limited-liability
company,

Defendants.

Case No.: 2:09-cv-02008-PMP-PAL

**PLAINTIFFS' MEMORANDUM OF
FEES AND COSTS**

Plaintiffs Tae-Si Kim and Jin-Sung Hong, by and through their counsel, Dickinson
Wright PLLC, herein submit Plaintiffs' Memorandum of Fees and Costs associated with the non-
appearance for deposition of Adam Kearney and subsequent filing of Plaintiffs' Motion to
Compel Deposition of Adam Kearney (Doc. No. 88) and Motion for Discovery Sanctions against

Adam Kearney (Doc. No. 89), as directed by this Court in this Court's October 7, 2010 Order (Doc. No. 96).

This Memorandum is supported by the Declaration of Jodi Donetta Lowry, attached hereto as Exhibit 1.

MEMORANDUM OF FEES AND COSTS

Plaintiffs incurred legal fees of \$8983.50 and taxable costs of \$487.50 in connection with Plaintiffs' preparation for and attempt to take the deposition of Mr. Kearney on August 25, 2010, Plaintiffs' subsequent preparation and filing of motions to compel Mr. Kearney's deposition and for discovery sanctions based on Mr. Kearney's non-response to discovery, and this Court's hearing on those motions, for a total of \$9471.00. The Declaration of Jodi Donetta Lowry, attached hereto as Exhibit 1, sets forth: (a) itemization and description of the work performed; (b) identification of the attorneys and staff performing that work; (c) those individuals' customary fees and the reasonableness thereof, as well as the costs and reasonableness thereof associated with Mr. Kearney's discovery malfeasances; and (d) descriptions of the experience, reputation, and ability of the attorneys and staff who performed work with respect to these matters. Plaintiffs thus respectfully request that this Court enter judgment against Mr. Kearney in the amount of nine thousand, four hundred seventy-one dollars (\$9471.00).

Respectfully submitted this 21st day of October, 2010.

DICKINSON WRIGHT PLLC

By /s/ J.D. Lowry

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CERTIFICATE OF SERVICE

Pursuant to Local Rule 5 of this Court, I certify that I am an employee of Dickinson Wright PLLC and that on this 21st day of October, 2010, I caused a correct copy of the foregoing **PLAINTIFF'S MEMORANDUM OF FEES AND COSTS** to be served via CM/ECF to:

Michael E. Stoberski, Esq.
mstoberski@ocgd.com

Zachary J. Thompson, Esq.
zthompson@ocgd.com

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Edward C. Reed; Barbara R. Reed; and
Reed Team, d/b/a RE/MAX Extreme

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Andres Camacho, Esq.

acamacho@alversontaylor.com

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Alverson, Taylor, Mortensen & Sanders

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jgarin@lipsonneilson.com

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Michael F. Bohn, Esq.

mbohn@bohnlawfirm.com

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Ltd.

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Las Vegas, Nevada 89119-4544

Telephone: 702.642.3113

Facsimile: 702.642.9766

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Brian L. Bradford, Esq.

blb@amclaw.com

Anderson, McPharlin & Conners LLP

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Las Vegas, Nevada 89107

Telephone: 702.479.1010

Facsimile: 702.479.1025

Counsel for Defendant

Cumorah Credit Union

1 I further certify that some of the participants in the case are not CM/ECF users, and
2 pursuant to FRCP 5, I caused a correct copy of the foregoing **** to be served via first-class
3 United States mail on the following at their respective last known addresses:

4
5 William J. Kelly, III, Esq.
6 wkelly@kellystacylaw.com
7 Kelly, Stacy & Rita, LLC
8 1401 17th Street, Suite 925
9 Denver, Colorado 80202
10 Telephone: 720.236.1800
11 Facsimile: 720.236.1799
12 *Counsel for Defendant*
13 RE/MAX International, Inc.

Mr. Adam B. Kearney
c/o Bank of America
2275 Corporate Circle, # 200
Henderson, Nevada 89074
Pro se Litigant

11 /s/ Priyanka Menon

12 An employee of Dickinson Wright PLLC

13 LASVEGAS 25169

EXHIBIT 1

DECLARATION OF JODI DONETTA LOWRY, ESQ.

Jodi Donetta Lowry, Esq. declares as follows under the pains and penalties of perjury of the State of Nevada and the United States of America:

1. I am an attorney-at-law licensed to practice in all courts of the state of Nevada. I am over eighteen years old. I have personal knowledge, or knowledge based on information and belief based on my review of records kept in the ordinary course of business, of all the factual matters set forth in this Declaration and would be competent to testify with respect to same.

2. I have practiced law in Las Vegas, Nevada since 2001, and I am familiar with the range of fees customarily charged by commercial litigation attorneys and staff of varying levels of experience in Las Vegas. I am also familiar with the usual and customary charges of computerized legal research services and of court reporters in Las Vegas. To the extent this Declaration sets forth my opinions regarding the reasonability of particular fees and costs, those opinions are based on my personal experience as a litigation attorney practicing in Las Vegas.

3. From August 16, 2008 to August 15, 2010, I was a partner in the law firm of Gibson Lowry Burris LLP ("GLB"). Since August 16, 2010, I have been an attorney of counsel in the Las Vegas office of the law firm of Dickinson Wright PLLC ("DW-Vegas"), which acquired GLB and became the employer of GLB's attorneys and staff on that date. At all times from August 16, 2008 to the present, I have had personal knowledge of: (a) the experience, reputation, and ability of all GLB and DW-Vegas attorneys and staff; (b) the customary fees charged for work performed by all GLB and DW-Vegas attorneys and staff; and (c) the manner in which GLB and DW-Vegas have kept attorney and staff time and billing records.

4. I have carefully reviewed the records kept by GLB and DW-Vegas attorneys of time spent performing work in the matter of *Kim, et al. v. Kearney, et al.*, case number 2:09-cv-02008-PMP-PAL in the United States District Court for the District of Nevada. In accordance with this Court's Order filed on October 7, 2010 (Document No. 96; the "Order") on Plaintiffs' Motion to Compel Deposition of Adam B. Kearney (Document No. 88) and Plaintiffs' Motion for Sanctions against Adam B. Kearney (Document No. 89; collectively with Document No. 88, the "Kearney Motions") I extracted, reviewed, and edited the billing entries by GLB and DW-Vegas

1 attorneys and staff with respect to events subject to this Court's order to Mr. Kearney to
2 reimburse Plaintiffs' attorney fees and costs (the "Chargeable Events"). I personally prepared
3 the document attached hereto as Exhibit 1-A, which sets forth the time reasonably spent and fees
4 and costs incurred by GLB and DW-Vegas attorneys and staff awarded by this Court with
5 respect to the Chargeable Events.

6 5. Entries in Exhibit 1-A identified with the initials "SG" reflect work performed by Steven
7 A. Gibson, previously a partner in GLB and now a member of Dickinson Wright PLLC as well
8 as the chief executive officer of Righthaven LLC. Mr. Gibson has practiced law for over 20
9 years, over 10 of which Mr. Gibson has spent in Las Vegas, practicing with, *inter alia*, the firms
10 of Lionel Sawyer & Collins; Santoro, Driggs, *et al.*; and Lewis Brisbois Bisgaard & Smith LLP.
11 Prior to Mr. Gibson entering the practice of law in Nevada, Mr. Gibson practiced law in Chicago,
12 Illinois and in Tokyo, Japan with large international firms including Sidley & Austin. Mr.
13 Gibson holds a B.A. from the University of Louisville and a J.D. from the Chicago-Kent College
14 of Law. Mr. Gibson has published extensively in the field of intellectual property and presented
15 many continuing legal education seminars and seminars for the general public regarding
16 intellectual property, and has a positive reputation in the Las Vegas legal community. Mr.
17 Gibson's hourly rate is \$395, a reasonable rate for a Las Vegas commercial litigation attorney of
18 Mr. Gibson's experience, reputation, and ability.

19 6. Entries in Exhibit 1-A identified with the initials "JDL" reflect work performed by me. I
20 commenced practicing law in Washington, D.C. in 1999 and moved to Las Vegas in 2001, where
21 I was an associate with the firm Broening Oberg Woods Wilson & Cass, P.C., acquired at the
22 beginning of 2004 by Lewis Brisbois Bisgaard & Smith LLP, for whom I worked until August
23 15, 2008. I hold a B.A. from Hollins College (now Hollins University) and a J.D. from
24 Washington and Lee University. I have published articles in the fields of intellectual property
25 and civil procedure, and have presented continuing legal education seminars regarding copyright
26 law and nursing home malpractice as well as legal seminars for physicians and nurses. In 2010 I
27 was named to the Mountain States SuperLawyers "Rising Stars" list in intellectual property
28

1 litigation. My hourly rate for this matter is \$250, a reasonable rate for a Las Vegas commercial
2 litigation attorney of my experience, reputation, and ability.

3 7. Entries in Exhibit 1-A identified with the initials “SB” reflect work performed by J. Scott
4 Burris, previously a partner in GLB, then an attorney of counsel at DW-Vegas until October 3,
5 2010, when Mr. Burris left DW-Vegas. Mr. Burris practiced law in Salt Lake City, Utah for
6 approximately three years before commencing practice in Nevada in 2007. Mr. Burris holds a
7 B.A. from Southern Utah University and a J.D. from the University of Utah, and clerked for a
8 Utah state court judge and with the enforcement division of the United States Securities and
9 Exchange Commission prior to entering law practice. Mr. Burris has a positive reputation in the
10 Las Vegas legal community. Mr. Burris’ hourly rate was \$205, a reasonable rate for a Las Vegas
11 commercial litigation attorney of Mr. Burris’ experience, reputation, and ability.

12 8. Entries in Exhibit 1-A identified with the initials “JS” reflect work performed by
13 Jonathan Salls, who, at the time of performing the work on this matter identified in Exhibit 1-A,
14 was a law clerk awaiting his Nevada bar results (and who, since on or about October 14, 2010,
15 has been a first-year associate at DW-Vegas). Mr. Salls received his B.A. in 2007 and his J.D. in
16 2010 from Brigham Young University, and worked for GLB as a summer associate in 2009. Mr.
17 Salls’ hourly rate as a law clerk was \$160, a reasonable rate for an experienced law clerk
18 awaiting bar results in Las Vegas.

19 9. Entries in Exhibit 1-A identified with the initials “PM” reflect work performed by
20 Priyanka Menon, a paralegal who has been employed by GLB and then DW-Vegas since late
21 2009 and who has been working as a paralegal in Las Vegas since early 2009. Ms. Menon’s
22 hourly rate is \$125, a reasonable rate for a second-year litigation paralegal in Las Vegas.

23 10. Entries in Exhibit 1-A identified with the initials “LW” reflect work performed by Lisa
24 Williams, a docketing clerk who has been employed by GLB and then DW-Vegas since early
25 2010. Prior to moving to Las Vegas and commencing work at GLB in 2010, Ms. Williams
26 worked in the records center of the home office of Gibson Dunn & Crutcher LLP in Los
27 Angeles, California. Ms. Williams’ hourly rate is \$100, a reasonable rate for a docketing clerk in
28 Las Vegas with Ms. Williams’ experience.

11. The total fees charged by GLB and DW-Vegas attorneys and staff with respect to the Chargeable Events are \$8983.50. This is a reasonable amount of fees charged with respect to: (a) preparation for the deposition of a defendant heavily implicated in a real estate fraud matter; (b) preparation of motions to compel a defendant's deposition and for sanctions against a defendant who has failed to make any discovery disclosures or responses; and (c) preparation for and attendance of a hearing on those motions.

12. In connection with Mr. Burris' and Mr. Salls' preparation of Plaintiffs' motions to compel and for sanctions against Mr. Kearney, Mr. Salls incurred LEXIS charges of \$155.50 and Mr. Burris incurred LEXIS charges of \$179.50. These are reasonable legal research charges with respect to these two relatively simple discovery motions.

13. In connection with Mr. Gibson's attempt on August 25, 2010 to take Mr. Kearney's deposition, Esquire Deposition Solutions charged \$152.50 for the reporting by a court reporter of Mr. Kearney's non-appearance. This is a typical and reasonable charge by Esquire for making a record of a deponent's non-appearance. Esquire's invoice (which inaccurately names Dickinson Wright PLLC as "Dixon Wright") is attached hereto as Exhibit 1-B.

14. The total costs incurred by Plaintiffs with respect to the Chargeable Events are \$487.50. Added to the fees charged with respect to the Chargeable Events, the total fees and costs associated with the Chargeable Events are \$9471.00. *In toto*, these are, in my opinion, reasonable fees and costs with respect to events of the nature of the Chargeable Events.

Dated this 21st day of October, 2010.

DICKINSON WRIGHT PLLC

By /s/ J.D. Lowry
STEVEN A. GIBSON
Nevada Bar No. 6656
JODI DONETTA LOWRY
Nevada Bar No. 7798
7201 West Lake Mead Boulevard, Suite 503
Las Vegas, Nevada 89128

EXHIBIT 1-A

Fees and Costs: August 25, 2010 Deposition of Adam Kearney, Motion to Compel Deposition of Adam Kearney, and Motion for Sanctions against Adam Kearney

Key:

SG = Steven A. Gibson, partner; hourly rate = \$395.00

JDL = J.D. Lowry, of counsel; hourly rate = \$250.00

SB = J. Scott Burris, of counsel; hourly rate = \$205.00

JS = Jonathan Salls, law clerk; hourly rate = \$160.00

PM = Priyanka Menon, paralegal; hourly rate = \$125.00

LW = Lisa Williams, docket clerk; hourly rate = \$100.00

Fees:

Date	Attorney or Staff	Description	Time	Fee
8/3/2010	SG	A. Kearney deposition planning and preparation	0.4	158.00
8/11/2010	SB	Prepare memorandum regarding material facts to be gained from A. Kearney deposition; prepare synopsis of relevant complaint allegations regarding same	1.5	307.50
8/12/2010	SG	A. Kearney deposition preparation	1.3	513.50
8/12/2010	SB	Review Plaintiffs' documents regarding potential deposition exhibits; left message with A. Kearney regarding deposition	1.1	225.50
8/16/2010	SG	A. Kearney deposition preparation	1.6	632.00
8/17/2010	SG	A. Kearney deposition preparation	0.8	316.00
8/18/2010	SG	A. Kearney deposition preparation	0.4	158.00
8/23/2010	SG	A. Kearney deposition preparation	0.4	158.00
8/24/2010	SG	A. Kearney deposition preparation; document review regarding same	4.6	1817.00
8/24/2010	JS	Collect and prepare deposition exhibits for A. Kearney	0.9	144.00
8/24/2010	PM	Prepare binder with proposed exhibits and other court documents for A. Kearney deposition	4.0	500.00
8/25/2010	SG	A. Kearney deposition; preparation therefor; commute to and fro from office; communication with client regarding same	2.0	790.00
8/27/2010	JS	Research and prepare motion to compel A. Kearney deposition	4.2	672.00
8/30/2010	JS	Prepare declaration for motion to compel deposition, proposed order granting motion to compel deposition, and motion to compel deposition of A. Kearney	1.6	256.00
9/2/2010	JS	Prepare motion to compel A. Kearney	0.7	112.00
9/7/2010	SB	Telephone conference with A. Kearney	4.0	820.00

		regarding A. Kearney's failure to appear for deposition; research federal rules regarding A. Kearney's failure to comply with discovery obligations; supplement motion to compel A. Kearney deposition regarding background facts and procedural posture; prepare arguments regarding A. Kearney's violations of FRCP 26, 30, and 34		
9/8/2010	SG	Prepare supplements to A. Kearney motion for sanctions/compulsion	0.3	118.50
9/8/2010	SB	Prepare proposed order for motion for sanctions against A. Kearney; prepare declaration regarding motion for sanctions against A. Kearney; prepare supplements to motion for sanctions regarding same; prepare additional exhibits to motion to compel and for sanctions regarding A. Kearney deposition; finalize and file A. Kearney Motion to Compel and For Sanctions	1.6	328.00
9/10/2010	LW	Analyze and docket deadlines regarding motion for A. Kearney discovery sanctions	0.1	10.00
9/13/2010	SB	Review order from court regarding hearing on A. Kearney motion to compel and for sanctions	0.1	20.50
9/14/2010	LW	Analyze and docket deadlines regarding hearing on motion for A. Kearney discovery sanctions	0.1	10.00
10/5/2010	SG	Attend hearing on A. Kearney motions to compel and for discovery sanctions; preparation therefor; commute to and fro from office	1.8	711.00
10/7/2010	JDL	Analyze Magistrate Judge P. Leen's order on motions to compel and for sanctions	0.1	25.00
10/7/2010	LW	Docket deadlines listed in order on motions to compel and for sanctions	0.1	10.00
10/11/2010	JS	Prepare certificate of compliance relating to court's order to notify A. Kearney; left voice message for A. Kearney regarding same	0.6	96.00
10/12/2010	JDL	Prepare supplements to and finalize certificate of compliance with court's order on motions to compel and for sanctions	0.3	75.00
		Total Fees		\$8983.50

Costs:

Date	Description	Cost
8/25/2010	Services provided by Esquire Deposition Solutions, Las Vegas, for A. Kearney non-appearance	152.50
8/27/2010	Computerized legal research by JS for motion to compel and for sanctions	155.50
9/7/2010	Computerized legal research by SB for motion to compel and for sanctions	179.50
	Total Costs	\$487.50

LASVEGAS 25172

EXHIBIT 1-A-1



Esquire Solutions - Las Vegas
2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303



ESQUIRE
an Alexander Gallo Company

Remit to:

Esquire Deposition Solutions
PO Box 79509
City of Industry CA 91716-9509
www.esquiresolutions.com

Toll Free (800) 845-3376
Fax (866) 590-3205

Invoice # PL252690

Invoice Date	08/31/2010
Terms	NET 30
Payment Due	10/01/2010
Date of Loss	
Name of Insured	
Adjustor	
Claim Number	

STEVEN GIBSON ,ESQ.
DIXON WRIGHT
SUITE 503
7201 WEST LAKE MEAD
LAS VEGAS, NV 89128

Assignment	Case	Assignment #	Shipped	Shipped Via
08/25/2010	KIM vs. KEARNEY	328433	09/01/2010	UPS

Description

Services Provided on 08/25/2010, ADAM KEARNEY

Tax: \$ 0.00

Paid: \$ 0.00

Amount Due On/Before 10/16/20 \$ 152.50

Amount Due After 10/16/2010 \$ 167.75

Tax Number: 20-4667049

Please detach and return this bottom portion with your payment
or pay online at www.esquireconnect.net



ESQUIRE
an Alexander Gallo Company



Invoice #: PL252690

Payment Due: 10/01/2010

Amount Due On/Before 10/16/2010 \$ 152.50

Amount Due After 10/16/2010 \$ 167.75

Remit to:

Esquire Deposition Solutions
PO Box 79509
City of Industry CA 91716-9509
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Thank you for your business!

016 0000252690 08312010 3 000015250 9 10012010 10162010 2 000016775 47